THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 4554 of 1998

DATED: 04-07-2007

Between:-

George Steven s/o G. Samuel, aged about 48 years, occ: Security Guard, R/o Secunderabad. (died)
2. Smt. G. Sarada,
3. Kum. Margaret Celina,
4. Kum. Ruth Salomi

(Petitioners 2 to 4 are brought on record as L.Rs of petitioner No.1 as per the court order dated 25.4.2001 in W.P.M.P.No. 27936/2000

…PETITIONERS

And

The National Mineral Development Corporation Limited, represented by its Chairman and Managing Director and three others.

..RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 4554 of 1998

O R D E R

During the pendency of this writ petition the petitioner died and his widow and two daughters were brought on record as his legal representatives.

Petitioner was appointed as a Security Guard on 10.05.1973 and his probation was declared on 04.11.1974. He was further promoted as Security Guard Grade-I on 28.11.1991 and his probation in the promoted post was declared on 16.07.1992. Petitioner was issued a charge memo dated 29.09.1992 for unauthorized absence from duty without prior permission/ sanction of leave from 24.04.1992 onwards. Petitioner contends that he had applied for leave for nine days from 20.04.1992 to 30.04.1992, that the said leave was duly sanctioned, that he again applied for leave from 06-05-1992 to 09-05-1992 on account of his wife's ill-health which was also sanctioned and that the 3rd respondent, without looking into the records, had issued a charge memo alleging that he had attended duties only for certain days during the years 1991, 1992 and 1993. Petitioner contends that the 3rd respondent had failed to take into consideration the leaves availed by him, the compensatory offs and casual leaves, as he was booked for double duties and that the 3rd respondent had also failed to consider

that the leave already sanctioned to the petitioner could not be treated as absence from duty. An enquiry was held which the petitioner contended to be staged-managed and that he had not been given reasonable opportunity of participating in the enquiry. On the basis of the report of the Enquiry Officer, the 3rd respondent issued show cause notice dated 23.11.1993 to which the petitioner submitted a detailed reply on 2-12-1993, which eventually resulted in an order of removal being passed on 23.12.1993. Petitioner contends that the punishment of removal from service, for unauthorized absence from duty, even assuming that the charge is held to have been established, is grossly disproportionate.

Aggrieved by the order of punishment, the petitioner preferred an appeal and the 2nd respondent, by order dated 14.09.1994, appointed him as a fresh Security Guard in the basic pay of Rs. 1730/-, which the petitioner contends is not one among the prescribed punishments under the Regulations of the Corporation. Petitioner was also aggrieved by his being posted as a Security Guard in Raipur in Madhya Pradesh though no such post was available thereat. The petitioner approached this Court by way of W.P. No. 249 of 1997 and this Court, by order dated 11.2.1997, directed the respondents to consider his representation within six weeks. Writ Appeal No. 404 of 1997 preferred by the petitioner was also disposed of directing him to submit a further representation. Petitioner submitted a representation

on 01-07-1997 and further representations on 20-08-1997 and 8-11-1997 and the 4th respondent, by order dated 06-12-1997, rejected his representation.

Aggrieved by the order of removal of the 3rd respondent dated 23.12.1993, confirmed by the 2nd respondent by order dated 25.01.1994 and modified by the 2nd respondent in his order dated 14.09.1994 and the order of the 4th respondent rejecting his representation dated 06-12-1997, the present writ petition is filed.

The 2nd respondent in the appeal preferred by the petitioner, against the order of the 3rd respondent, considering various aspects, and keeping in view the petitioner's age and the length of service, took a lenient view on compassionate grounds for providing a final opportunity, appointed him as a Security Guard Grade-I afresh, reprimanded him for his conduct and seriously warned him to be careful in future. He was also given a last and final opportunity to correct his conduct and behaviour.

Sri A.K. Jaya Prakash Rao, learned counsel for the petitioner, would submit that, notwithstanding the relief sought for in the writ petition, since the petitioner died during the pendency of the writ petition, his legal representatives (petitioners 2 to 4) restrict their claim in this writ petition only for including the services rendered by the

petitioner earlier i.e. from the date of his initial appointment as a Security Guard on 10-05-1973 till he was appointed afresh on 14.09.1994 to be treated as 'continuous service' for notional fitment, in computation and payment of pension and other terminal benefits. Learned counsel would submit that petitioners 2 to 4 are giving up their claims for arrears of salary/differential salary for the period from 23-12-1993 till 14-09-1994 and from 14.09.1994 till 06-07-2000 respectively.

While several contentions are raised with regards validity of the order of punishment, it would suffice if the contention that the punishment imposed on the petitioner is not amongst those prescribed under the rules and could not have been imposed, is taken note of.

The National Mineral Development Corporation Limited Employees' (Conduct, Discipline and Appeal) Rules, 1978, apply to all the employees of the Corporation. Rule 23 which relates to penalties, reads as under:-

> "The following penalties may be imposed on an employee, as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.
>
> **Minor Penalties**:
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> (a) Censure;
>
> (b) Withholding of increment of pay with or without cumulative effect;
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> (c) Withholding of promotion;
>
> (d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to

the Company by negligence or breach of orders.

Major Penalties.

(e) reduction to lower grade or post, or to a lower stage in a time scale;

(f) removal from service which shall not be a disqualification for future employment;

(g) dismissal.

Explanation

The following shall not amount to a penalty within the meaning of this rule:-

(i) withholding of increment of an employee for his failure to pass a prescribed test or examination;

(ii) stoppage of an employee at the efficiency bar in the time scale, on the ground of his unfitness to cross the bar;

(iii) non-promotion, wherein an officiating capacity or otherwise of an employee to a higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

(iv) reversion to a lower grade or post, of an employee officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for which higher grade or post, or on administrative grounds unconnected with his conduct;

(v) reversion to his previous grade or post of an employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment.

(vi) Termination of service:

(a) of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment.

(b) of an employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

(c) of an employee appointed under contract or agreement, in accordance with the terms of such contract or agreement; and

(d) of any employee of reduction of establish."

While "censure" is among the minor penalties specified, the rules do not contemplate imposition of the punishment of being appointed afresh.

IN STATE BANK OF INDIA AND OTHERS V. T.J. PAUL[1], the respondent employee joined service in the Bank of Cochin, which was subsequently amalgamated with the State Bank of India. Pursuant to a departmental enquiry, he was imposed the punishment of removal from service. The rules applicable to Bank of Cochin did not prescribe removal as one of the punishments. It is, in this contest, that the Supreme Court observed,

> "…….But this does not conclude the matter. The learned senior counsel for the respondent Sri P. P. Rao is right in contending that the appellate authority, once it came to the conclusion that the punishment of dismissal was not warranted in the facts of the case, it could not have awarded the punishment of 'removal' which was not one of the enumerated penalties under para 22(v) of the Rules. In fact, the learned single Judge also adverted to this aspect. If one reads the order of the appellate authority, it is clear that the said authority went by Rule 49(g) of the State Bank of India (supervising Staff) Service Rules which admittedly, is not applicable to charges pertaining to the period 1977-1981 when the Rules of Cochin Bank applied. The amalgamation of the Bank of Cochin with the State Bank of India took place only on 27-

4-85. It may be that the Rules of the State Bank of India provided for a punishment of removal, but in the Rules relating to penalties for 'major misconduct' in para 22(v) of the Rules applicable to the employees of the Bank of Cochin, removal is not one of the enumerated punishments which could be imposed. The said punishment is not the same thing as "condoning misconduct and merely discharging from service" as provided in para 22(v)(e) of the said Rules.

Learned senior counsel for the appellants Sri T. R. Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of 'removal', which was lesser in severity. Learned senior counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this Court in Union of India v. G. Ganayutham, (AIR 1997 SC 3387 : 1997 AIR SCW 3464 : 1997 Lab IC 3341) : (1997) 7 SCC 463. In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the Rules of the Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion as restricted by the Rules. Inasmuch as the Rules of the Bank of Cochin have enumerated and listed out the punishments for 'major misconduct', we are of the view that the punishment of 'removal' could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishments for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of 'removal' that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are 'warning or

censure or adverse remark being entered, or fine; or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service. The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one of the other punishment in para 22 (v) other than dismissal without notice.

In the result the setting aside of the order of 'removal' as done by the High Court is sustained and the directions to pay him the backwages, grant such promotions and monetary benefits by way of salary, promotion, increments, etc. as granted by the High Court will also remain. There will, however, be a modification of the orders of the learned single Judge and of the Division Bench to the extent, namely, that the matter will go back to the appellate authority for considering which of the punishments other than 'dismissal without notice' under para 22 (v) could be imposed on the respondent. We direct accordingly. The benefits above referred to as directed by the High Court shall be computed and paid to the respondent in accordance with the relevant rules within 3 months from the date of receipt of a copy of this order……." (emphasis supplied)

Sri K. Raghavacharyulu, learned counsel for the respondents, would submit that, notwithstanding that the rules do not prescribe imposition of punishment of "appointment afresh", since the petitioner was appointed on compassionate and humanitarian grounds, pursuant to a settlement between the Employees Federation and the Management under Section 18(1) of the Industrial Disputes Act, and he had accepted such appointment, it was not open for him to turn

around and question the same. Section 18(1) of the I.D. Act binds only the parties to the settlement. Neither has a copy of the said settlement been placed before this Court nor does the order of the appellate authority dated 14.09.1994 make any reference to the alleged settlement. The contents of the said settlement are also not known nor has anything been stated as to whether the petitioner was a member of the Employees Federation which entered into the settlement, for only if he was a member of the federation, would any settlement under Section 18 (1) of the I.D. Act be binding on him.

It is necessary to note that the appellate authority, in his order dated 14.09.1994, had reprimanded the petitioner for his misconduct and warned him to be more careful in future. Even assuming that this would fall within the ambit of "censure", which is among the prescribed minor penalties, the other portion of the order appointing him afresh as Security Guard Grade-I is not amongst the punishment prescribed under the rules. The order of the disciplinary authority dated 23.12.1993 has merged with the order of the appellate authority. On an order being passed by the appellate authority, the original order merges in the appellate decisions and it is the order of the appellate authority alone which is subsisting and is operative and is capable of enforcement **(SOMNATH SAHU V. STATE OF ORISSA – 1969 (3) SCC 384)**. It is therefore the validity of the order of the appellate authority which necessitates examination and not the earlier order

passed by the disciplinary authority. As the punishment imposed, is not amongst the punishments prescribed under the Regulations, the order of the appellate authority is liable to be quashed. Petitioner would, ordinarily, have been entitled for all consequential benefits arising out of the quashing of the order till the appellate authority re-considered the matter and imposed one amongst the punishments prescribed under the rules. The fact, however, remains that since the petitioner died during the pendency of the writ petition, no further disciplinary action can be taken against him including that of imposition of punishment.

Sri A.K. Jaya Prakash Rao, learned counsel for the petitioner, has, on instructions, restricted the claim of the petitioners only for grant of continuity of service from the date of initial appointment as a Security Guard on 10.05.1973 till he was appointed afresh on 14.9.1994, only for the purpose of notional fixation of pay for grant of terminal benefits including pension.

Ends of justice would be met if the impugned order of the appellate authority is quashed and the 2nd respondent is directed to consider the claim of the petitioner for being extended the benefit of continuity of service from 10.05.1973 till 14.09.1994 when he was appointed afresh and for computation of his terminal benefits based thereupon and pass appropriate orders in the light of the observations

made in this order. The entire exercise in this regard shall be completed within a period of three months from the date of receipt of a copy of this order.

The writ petition is allowed. However, in the circumstances, without costs. m

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RAMESH RANGANATHAN, J

Dated: 04-07-2007

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[1] AIR 1999 SC 1994